of lack of privity between the parties. *Bank of the Republic* v. *Millard,* 10 Wall. (U. S.) 152. In others, because of the anomaly of two rights of action, for the same cause, in two parties having opposite interests. *Creveling* v. *Bank,* 46 N. J. L. 255, 50 Am. Rep. 417; *Cincinnati, etc., Railroad Co.* v. *Bank,* 54 Ohio St. 60, 42 N. E. 700, 56 Am. St. Rep. 700. In some jurisdictions a check is considered an assignment of the drawer's fund *pro tanto,* and hence the holder is allowed to sue the bank. *First Nat. Bank of Duquoin* v. *Keith,* 183 Ill. 475, 56 N. E. 179. In others the right is upheld on the implied promise of the bank to pay all checks given by the drawer when there is a sufficient amount on deposit. *Fonner* v. *Smith,* 31 Neb. 107, 47 N. W. 632, 28 Am. St. Rep. 510; *Simmons, etc., Co.* v. *Bank,* 41 S. C. 177, 19 S. E. 502, 44 Am. St. Rep. 700. In the principal case, and in previous ones under substantially the same circumstances, the Kansas court allows an action by the holder on the contract made in his behalf. It seems that in the principal case the right of the holder of the check against the bank was purely equitable, arising out of the peculiar circumstances of the case. In the so-called "Code" states, where the practice and pleading at law and in equity is the same, the distinction between equitable and legal rights is often lost sight of. Peculiar circumstances may often give rise to equitable rights without violating the settled rules of the common law.

CARRIERS—CONSTITUTIONAL LAW—REGULATION BY COMMISSION—SALE OF MILEAGE BOOKS.—The defendant voluntarily put on sale mileage or penny scrip books at a rate less than the maximum rate fixed by the commission, which were good for passage only when exchanged for a ticket. The commission issued an order requiring all railroads selling mileage or penny scrip books to pull them on the trains of the company selling the same, when presented by the holders for transportation between points wholly within the state. *Held,* this is a valid regulation and is not an interference with the freedom of contract. *Railroad Commission of Ga.* v. *L. & N. Ry. Co.* (Ga.), 80 S. E. 327.

It is settled that there is no absolute liberty of contract, and limitations thereon by police regulations of the state are frequently necessary in the interest of public welfare and do not violate the freedom of contract guaranteed by the fourteenth amendment. *Frisbie* v. *U. S.,* 157 U. S. 160; *Schmidinger* v. *Chicago,* 226 U. S. 578. This is of course subject to the qualification that such regulation must not be so arbitrary or unreasonable as to amount to a denial of due process of law or a taking of private property for public use without just compensation. *Stone* v. *Trust Co.,* 116 U. S. 307; *Smyth* v. *Ames,* 169 U. S. 466. Therefore, common carriers from the public nature of the business carried on by them, and the interest which the public has in their operation, are subject as to their intrastate business to state regulation, which may be exerted either directly by the legislature or by administrative bodies endowed with power to that end. *Gladson* v. *Minn.,* 166 U. S. 427; *A. C. L. Ry. Co.* v. *N. C. Corp. Com.,* 206 U. S. 1. This power to regulate common carriers still exists even though such regulations may to some extent affect the power to contract. *L. & N. Ry.*

*Co.* v. *Mottley,* 219 U. S. 467; *Stephens* v. *Central Ry. Co.,* 138 Ga. 625, 75 S. E. 1041, 42 L. R. A. (N. S.) 541.

It is also settled, however, that where a state has fixed a reasonable maximum rate, it cannot compel railroad companies to sell mileage or penny scrip books at a less rate, as this would be an unjustifiable interference with their freedom of contract. *Lake Shore Ry. Co.* v. *Smith,* 173 U. S. 684; *Com.* v. *A. C. L. Ry. Co.,* 106 Va. 61, 55 S. E. 572, 117 Am. St. Rep. 983, 7 L. R. A. (N. S.) 1086. It is also established that by purchasing a reduced rate ticket, when an opportunity is given to purchase an ordinary ticket, the passenger enters into and is bound by a contract with the carrier different from that implied by law upon the purchase of an ordinary ticket at the regular rate of fare. *Bitterman* v. *Railway Co.,* 207 U. S. 205; *Mason* v. *Railroad,* 159 N. C. 183, 75 S. E. 25. Where the carrier has authority to issue mileage books, and such authority is unaccompanied by any restrictions as to the manner of using, the carrier may attach any conditions to the sale of such mileage books as it sees fit. *Eschner* v. *Penn. Ry. Co.,* 18 I. C. C. 60. Nevertheless it would seem that the state in the exercise of its police power could impose reasonable regulations as to the manner of using mileage or penny scrip books. *L. & N. Ry. Co.* v. *Mottley, supra; Stephens* v. *Central Ry. Co., supra.*

CARRIERS—INJURY TO PULLMAN PORTER—CONTRACT LIMITATION OF LIABILITY.—A porter on a palace car, employed under a contract exempting the Pullman Company and the railroad company from liability for injuries received while in the former's service, was killed in a collision. *Held,* the porter is not a passenger in the ordinary sense of the word but an action will lie for his death through the negligence of the railroad company. *Coleman* v. *Pennsylvania R. Co.* (Pa.), 89 Atl. 87.

It is settled that a common carrier of passengers cannot limit its liability for its own or its servants' negligence in respect to passengers who pay the regular fare, nor, by the weight of authority, are such stipulations against liability made valid by granting a reduced fare. *Pittsburg, etc., Ry. Co.,* 165 Ind. 694, 76 N. E. 299, 4 L. R. A. (N. S.) 1081. The courts are in conflict as to the right to limit liability to passengers riding on free passes. In favor of the right, see *Shelton* v. *Canadian N. Ry. Co.,* 189 Fed. 153; *Griswold* v. *N. Y. R. Co.,* 53 Conn. 371, 4 Atl. 261, 55 Am. Rep. 115; *Gill* v. *Erie R. Co.,* 151 App. Div. 131, 135 N. Y. Supp. 355; *Rogers* v. *Kennebec Steamboat Co.,* 86 Me. 261, 29 Atl. 1069, 25 L. R. A. 491; 14 HARV. LAW REV. 147. *Contra, Farmers' Loan & Trust Co.* v. *B. & O. S. W. Ry. Co.,* 102 Fed. 17; *Sullivan-Sanford Lumber Co.* v. *Watson* (Tex.), 135 S. W. 635; *Huckstys* v. *St. L. & H. Ry. Co.,* 166 Mo. App. 330, 148 S. W. 988; and in Virginia by statute, *Norfolk & W. Ry. Co.* v. *Tanner,* 100 Va. 379, 41 S. E. 721. The courts of all of the states but one in which the question has arisen hold that railroads cannot limit their liability for injuries to drovers travelling on free passes while accompanying shipments. *Kirkendall* v. *Union Pac. R. Co.,* 200 Fed. 197; *Sprigg's Admr.* v. *Rutland R. Co.,* 77 Vt. 347, 60 Atl. 143. *Contra, Hodge* v. *Rusland R. Co.,* 112 App. Div. 142, 97 N. Y. Supp. 1107.